

(ii) *Prohibition of inquiries on sexual orientation or gender identity.* No owner or administrator of HUD-assisted or HUD-insured housing, approved lender in an FHA mortgage insurance program, nor any (or any other) recipient or subrecipient of HUD funds may inquire about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted housing or housing whose financing is insured by HUD, whether renter- or owner-occupied, for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity. This prohibition on inquiries does not prohibit lawful inquiries of an applicant or occupant's sex where the housing provided or to be provided to the individual is temporary, emergency shelter that involves the sharing of sleeping areas or bathrooms, or inquiries made for the purpose of determining the number of bedrooms to which a household may be entitled.

(b) *Disclosure requirements.* The disclosure requirements and prohibitions of 31 U.S.C. 1352 and implementing regulations at 24 CFR part 87; and the requirements for funding competitions established by the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3531 *et seq.*).

(c) *Debarred, suspended, or ineligible contractors and participants.* The prohibitions at 2 CFR part 2424 on the use of debarred, suspended, or ineligible contractors and participants.

(d) *Drug-free workplace.* The Drug-Free Workplace Act of 1988 (41 U.S.C. 701, *et seq.*) and HUD's implementing regulations at 2 CFR part 2429.

[61 FR 5202, Feb. 9, 1996, as amended at 65 FR 16715, Mar. 29, 2000; 72 FR 73491, Dec. 27, 2007; 76 FR 45167, July 28, 2011; 77 FR 5674, Feb. 3, 2012]

§ 5.107 Audit requirements for non-profit organizations.

Non-profit organizations subject to regulations in the part 200 and part 800 series of title 24 of the CFR shall comply with the audit requirements of 2 CFR part 200, subpart F. For HUD pro-

grams, a non-profit organization is the mortgagor or owner (as these terms are defined in the regulations in the part 200 and part 800 series) and not a related or affiliated organization or entity.

[62 FR 61617, Nov. 18, 1997, as amended at 80 FR 75934, Dec. 7, 2015]

§ 5.109 Equal Participation of Religious Organizations in HUD Programs and Activities.

(a) *Purpose.* Consistent with Executive Order 13279 (issued on December 12, 2002, 67 FR 77141, 3 CFR, 2002 Comp., p. 258), entitled "Equal Protection of the Laws for Faith-Based and Community Organizations," this section describes HUD's policy for the equal participation of religious organizations in HUD's programs and activities. The equal participation policies and requirements contained in this section are generally applicable to religious organizations in all HUD programs and activities. More specific policies and requirements regarding the participation of religious organizations in individual HUD programs may be provided in the regulations for those programs.

(b) *Equal participation of religious organizations in HUD programs and activities.* Religious organizations are eligible, on the same basis as any other organization, to participate in HUD's programs and activities. Neither the Federal government, nor a State or local government, nor any other entity that administers any HUD program or activity shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(c) *Inherently religious activities.* Organizations that receive direct HUD funds under a HUD program or activity may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under a HUD program or activity. If an organization conducts such inherently religious activities, the inherently religious activities must be offered separately, in time or location, from the programs, activities, or services supported by direct HUD funds and participation must be voluntary for the

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beneficiaries of the programs, activities or services provided under the HUD program.

(d) *Independence of religious organizations.* A religious organization that participates in a HUD program or activity will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not engage in any inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services supported by direct HUD funds. Among other things, religious organizations may use space in their facilities to provide services under a HUD program without removing religious art, icons, scriptures, or other religious symbols. In addition, a religious organization participating in a HUD program retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(e) *Exemption from Title VII employment discrimination requirements.* A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1), is not forfeited when the organization participates in a HUD program. Some HUD programs, however, contain independent statutory provisions that impose certain nondiscrimination requirements on all grantees. Accordingly, grantees should consult with the appropriate HUD program office to determine the scope of applicable requirements.

(f) *Nondiscrimination requirements.* An organization that receives direct HUD funds shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(g) *Acquisition, construction, and rehabilitation of structures.* HUD funds may not be used for the acquisition, construction, or rehabilitation of struc-

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tures to the extent that those structures are used for inherently religious activities. HUD funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under a HUD program or activity. Where a structure is used for both eligible and inherently religious activities, HUD funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to the HUD program or activity. Sanctuaries, chapels, and other rooms that a HUD-funded religious congregation uses as its principal place of worship, however, are ineligible for HUD-funded improvements. Disposition of real property after use for the authorized purpose, or any change in use of the property from the authorized purpose, is subject to governmentwide regulations governing real property disposition (see, *e.g.*, 2 CFR 200.311).

(h) *Commingling of Federal and State and local funds.* If a state or local government voluntarily contributes its own funds to supplement Federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, the requirements of this section apply to all of the commingled funds. Further, if a State or local government is required to contribute matching funds to supplement a Federally funded activity, the matching funds are considered commingled with the Federal assistance and therefore subject to the requirements of this section. Some HUD programs' requirements govern any project or activity assisted under those programs. Accordingly, grantees should consult with the appropriate HUD program office to determine the scope of applicable requirements.

[69 FR 41717, July 9, 2004, as amended at 80 FR 75934, Dec. 7, 2015]

§5.110 Waivers.

Upon determination of good cause, the Secretary may, subject to statutory limitations, waive any provision